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June 17, 2022

By ECF

Honorable Cathy L. Waldor, U.S.M.J.
US District Court for the District of NJ
50 Walnut Street
Newark, NJ 07101

Re: *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC*
Civ. No. 2:22-cv-02632-JMV-CLW

Dear Judge Waldor:

We represent Plaintiff Johnson & Johnson Health Care Systems Inc. (“JJHCS”) in the above-captioned matter. We write to respectfully request that the Court schedule an initial conference pursuant to Fed. R. Civ. P. 16.

As set forth below, Defendant Save On SP, LLC (“SaveOnSP”) has refused to participate in a Rule 26(f) conference at present, notwithstanding the Rule’s admonition that the parties “must confer as soon as practicable.”

By way of background, JJHCS brought this action seeking damages and to enjoin an unlawful scheme by SaveOnSP to exploit JJHCS’s patient assistance program, which provides funds to help patients afford their medication. SaveOnSP instead captures the JJHCS patient assistance funds for its own benefit and that of its business partners in the health insurance industry. Compl. ¶¶ 1-5, 8-17, 50-88. SaveOnSP does this by committing various deceptive acts, including outright misrepresentations, and by threatening patients with prohibitively high costs for their badly needed medication unless they acquiesce to enrollment in the SaveOnSP program. *Id.* ¶¶ 11-16, 60-67, 73-88. JJHCS alleges that SaveOnSP’s scheme causes ongoing harm to patients and has wrongfully caused JJHCS to pay at least \$100 million more in copay assistance than it otherwise would have. *Id.* It is imperative to commence discovery promptly to fully investigate these unlawful practices, which threaten the viability of JJHCS’s patient assistance programs.

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JJHCS filed its Complaint on May 4, more than six weeks ago, and since then JJHCS has been reasonable and accommodating with regard to extensions. SaveOnSP first availed itself of a two-week extension. Thereafter, SaveOnSP sought more time and JJHCS unconditionally consented to a further 30-day extension. SaveOnSP's response to JJHCS's complaint is now due on July 15, 2022, and JJHCS understands that SaveOnSP intends to file a motion to dismiss.

JJHCS has repeatedly asked SaveOnSP to schedule a Rule 26(f) conference, without prejudice to SaveOnSP's right to ask the Court to stay discovery. SaveOnSP first appeared in the case on May 25, 2022. As a result, Fed. R. Civ. P. 16 requires that a Rule 16 conference be held no later than July 24, *see* Fed. R. Civ. P. 16(b)(2), and the parties must therefore hold a preliminary Rule 26(f) conference no later than July 3, *see* Fed. R. Civ. P. 26(f)(1). But SaveOnSP has responded that it "must decline to entertain proposals for dates for a Rule 26(f) conference at this time." SaveOnSP has cited Local Rule 16.1 and contends that "[b]ecause the deadline for a Rule 26(f) conference is triggered by the Court's scheduling of the Rule 16 conference, the latest date to hold such a conference is at present not known." SaveOnSP has further stated that "as a practical matter, we believe that any such conference would be premature, and thus unproductive, until the Court rules on Save On SP's forthcoming motion [to dismiss]."

If SaveOnSP wishes to move to stay discovery in anticipation of its motion to dismiss, it may do so. We note, however, that in this district motions to stay discovery are "not favored" and "it is well settled that the mere filing of a dispositive motion does not constitute 'good cause' for the issuance of a discovery stay." *E.g., Adriana Castro, M.D., P.A. v. Sanofi Pasteur Inc.*, No. CV 11-7178 (JLL), 2012 WL 12918261, at *1 (D.N.J. July 18, 2012). JJHCS submits that a prompt Rule 26(f) conferral among the parties, and a Rule 16 conference with the Court thereafter, will help ensure that this matter continues to move forward expeditiously. Scheduling such a conference does not preclude SaveOnSP from seeking a stay or any other relief that it deems appropriate.

Given the public importance of this case and SaveOnSP's position, JJHCS respectfully requests that the Court schedule an initial Rule 16 conference on or about July 24, 2022, consistent with Fed. R. Civ. P. 16, or on any other proximate date convenient for the Court. We appreciate the Court's attention to this matter.

Respectfully submitted,

/s/ *Jeffrey J. Greenbaum*

JEFFREY J. GREENBAUM

cc: Counsel of record (*via ECF*)